

DEC 12 2008

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ALAN H, individually and as Guardian Ad
Litem for David H. An incompetent minor;
CHERYL H, individually and as Guardian
Ad Litem for David H., an incompetent
minor; DAVID H, an incompetent minor,

Plaintiffs - Appellants,

v.

STATE OF HAWAII; DCCA, Department
of Commerce and Consumer Affairs,

Defendants - Appellees.

No. 07-17300

D.C. No. CV-06-00212-DAE

MEMORANDUM *

Appeal from the United States District Court
for the District of Hawaii
David A. Ezra, District Judge, Presiding

Argued and Submitted November 21, 2008
Honolulu, Hawaii

Before: SCHROEDER, PAEZ and N.R. SMITH, Circuit Judges.

Plaintiffs-Appellants Alan H. and Cheryl H., individually, and as guardians
ad litem for their son, David H., seek to appeal the district court's order denying

* This disposition is not appropriate for publication and is not precedent
except as provided by 9th Cir. R. 36-3.

their “motion for declaratory and other equitable relief” for their claim under the Individuals with Disabilities in Education Act (IDEA). Plaintiffs brought this action in the district court of Hawaii alleging claims under the IDEA, Title II of the Americans with Disabilities Act of 1990, and section 504 of the Rehabilitation Act of 1973. The district court denied the Plaintiffs’ claim under the IDEA, but ordered Defendant-Appellee, State of Hawaii, to pay Plaintiffs for the cost of David H.’s private school tuition during the 2005-2006 school year pursuant to the stay-put provision of the IDEA, 20 U.S.C. § 1415(j). The other claims remain pending in the district court. Because the order appealed from only disposed of the IDEA claim, there is no appealable final judgment. See 28 U.S.C. § 1291; Cheng v. C.I.R., 878 F.2d 306, 310 (9th Cir. 1989) (“[A]n order must conclusively terminate the litigation in order to be considered final; an order that *may* terminate the proceeding is insufficient.”). We therefore lack appellate jurisdiction.

DISMISSED.